IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1519 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHBHAI KIRITBHAI SHASHTRI - Appellant(s)
Versus
KALABHAI MANGABHAI THAKOR & 3 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
UNSERVED-EXPIRED (R) for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,
MR MAULIK J SHELAT for Defendant(s) : 3,
MR JV JAPEE for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the original

claimant challenging the judgment and award dated 30.11.1999 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in MAC Petition No. 173 of 1997.

2. In a vehicular accident which took place on 4.5.1991, the appellant – original claimant received bodily injuries. He lost four teeth and received serious injuries on his nose and on other parts of his face. For claiming compensation for the injuries and permanent disablement that the claimant suffered, he filed the above mentioned claim petition seeking compensation of Rs.3,00,000/- from the opponents herein.

3. The Claims Tribunal partially allowed the claim petition and granted a sum of Rs.85,980/- to the claimant under different heads. Interest at the rate of 12% per annum was also ordered to be paid on this amount from the date of the claim petition till realization. The claimant has filed this appeal seeking enhancement of the compensation.

4. It may be noted that the nature of the accident, the fact that the claimant received injuries in the said accident and the question of negligence of the driver of the offending vehicle in causing the accident are not at large before us. The Insurance Company has not filed any appeal against the impugned award nor raised any cross objections in the present appeal. In that view of the matter, we

need not go into this aspect of the matter.

5. Coming to the question of reasonableness of the compensation awarded by the Tribunal, it may be noted that the claimant was employed as a Clerk in a co-operative bank. It was the claimant's case before the Tribunal that he was drawing monthly salary of approximately Rs.4,000/- on the date of the accident. He had received serious bodily injuries. As noted, he had lost four teeth and received permanent scar and depression on the nose and his face had become disfigured. With these injuries, he had approached the Tribunal seeking compensation of Rs.3,00,000/-.

The Tribunal believed his monthly income on the date of the accident as Rs.2,637/- and worked out the future loss of income at Rs.263/- per month or Rs.3,156/- per annum by taking into account 10% disablement as agreed by the claimant. The Tribunal adopted the multiplier of 15 for the claimant who was aged 29 years on the date of the accident. The Tribunal thus awarded a sum of Rs.47,340/- for loss of future income. To this, the Tribunal added Rs.15,000/- for pain, shock and suffering, Rs.13,000/- for medical treatment and Rs.10,640/- for other miscellaneous items such as special diet, transportation, etc. In all, the Tribunal awarded the compensation of Rs.85,980/-.

6. Before us, learned advocate Shri Sandip C

Shah appearing for the claimant submitted that the claimant was drawing monthly salary of approximately Rs.4,000/- on the date of the accident and on the date of deposition in the year 1999, he had already reached Rs.8,000/-. According to him, therefore, the Tribunal erred in working out the future loss of income on the presumed salary of Rs.2,637/- of the claimant. He also submitted that the Tribunal awarded inadequate amounts under the heads of pain, shock and suffering and medical expenditure, etc.

7. On the other hand, learned advocate Shri Maulik Shelat appearing for opponent No.3 – Insurance Company opposed the appeal. He submitted that the award passed by the Tribunal is adequate and calls for no enhancement. He submitted that there was evidence on record to establish that due to the injury, the salary of the claimant had not suffered and in fact he was receiving higher salary than at the time of the accident. He, therefore, submitted that even if the claimant is to be reimbursed for any notional loss of future income, the multiplier could not exceed 5 as is held by a Division Bench of this Court in State of Gujarat vs. Somabhai D. Sindhava, 1993 (2) GLR 1043.

8. Having heard the learned advocates for the parties, we find that the claimant was a young man, aged 29 years on the date of the accident. He received serious bodily injuries resulting into permanent disabilities. As noted, he lost four

teeth. He received injuries on his nose and his face was disfigured. In that view of the matter, even if the claimant did not immediately lose his job or suffer any direct immediate economic loss, it cannot be denied that the injuries did diminish his market value so far as his employment is concerned. Significantly he was employed as a Clerk at that age of 29 years. He had chance of making further career advancements and receiving periodical promotions. On account of his handicap, the chance of promotion would certainly suffer. Additionally, we also find that though momentarily his monthly salary was revised upwardly, he was employed in a co-operative bank with no assurance of permanency of service. It is not in dispute that the bank in which the claimant was employed shortly after his deposition before the Claims Tribunal went into liquidation. It is a common ground that some time in the year 2001 the bank in question had to stop commercial transactions and went into liquidation. Learned advocate Shri Sandip Shah, under instructions of the appellant, stated before us that since then the bank had retained only the skeleton staff and retrenched most of the employees. The appellant is one of the 30 odd employees who were retained for the administrative work of winding up operations of the bank. The appellant is paid monthly consolidated salary of Rs.1,500/-.

Considering these aspects of the matter,

ordinarily though it is well accepted that if an employee does not suffer set back in his salary on account of the injury, multiplier of 5 is to be adopted, considering that after retirement, his chance of re-employment or earning income would suffer, in the present case the said principles cannot be automatically applied. We cannot shut our eyes to the undisputed subsequent developments. The claimant who was receiving monthly salary of Rs.8,000/- in the year 1999 is currently forced to work full time for a sum of Rs.1,500/- per month. This itself demonstrates that his chance of re-employment elsewhere has been greatly diminished.

9. Coming to the question of income of the claimant, there was documentary evidence to suggest that he was earning basic salary of Rs.2,637/- per month. The assertion that he was receiving a total salary of Rs.4,000/- per month on the date of the accident needs to be accepted. In his deposition in the year 1999, he had stated that he received the salary of Rs.8,000/- per month. If we take the mean of the salary on the date of the accident and his salary on the date of deposition, it would not be improper to accept Rs.6,000/- per month as uniform prospective salary of the claimant. 10% thereof as agreed by the claimant himself would come to Rs.600/- as future economic loss per month or Rs.7,200/- per year.

In view of the above discussion, we adopt

the multiplier of 16 since the claimant was aged 29 years on the date of the accident. Thus, the future loss of income will be worked out at Rs.600 x 12 x 16 = Rs.1,15,200/-.

10. Considering the age of the claimant and the nature of the injuries which were well supported by the medical evidence, we enhance the compensation for pain, shock and suffering to Rs.25,000/-. We further grant Rs.15,000/- for medicines and medical treatment and Rs.10,000/- for special diet and attendant charges. It had come on record that on account of the injuries, the claimant could not discharge his normal duties for a period of two months. He would, therefore, receive salary of Rs.8,000/- at the rate of Rs.4,000/- per month. Thus, the claimant would be entitled for a total compensation of Rs.1,72,200/-. Since the Tribunal has already awarded a sum of Rs.85,980/-, the claimant shall receive additional compensation of Rs.87,220/-. The additional compensation shall carry proportionate costs and interest at the rate of 9% per annum from the date of claim petition till realization. Opponent No.3 shall deposit the same before the Tribunal latest by 30th March, 2007.

11. Considering that the claimant is an educated person and requires some large disbursements, in the facts of this case, it is provided that upon such deposit, the Tribunal shall invest 70% of the amount in the fixed deposit in any nationalized bank near

the residence of the claimant for a period of three years, with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, with permission to the claimant to withdraw interest periodically accruing on the fixed deposits and with a direction to the bank not to permit the account to be operated by any power of attorney holder other than a close relative of the claimant.

The remaining amount shall be disbursed to the claimant through an account payee cheque after proper verification and after informing him about the amounts being invested/disbursed and the terms and conditions of the investment.

12. With these directions, this appeal is disposed of.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-